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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/701,883	11/05/2003	Nabil L. Muhanna	M112 1071.1	6707
26158	7590	06/20/2007	EXAMINER	
WOMBLE CARLYLE SANDRIDGE & RICE, PLLC			PRONE, CHRISTOPHER D	
ATTN: PATENT DOCKETING 32ND FLOOR			ART UNIT	PAPER NUMBER
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ATLANTA, GA 30357-0037				

MAIL DATE	DELIVERY MODE
06/20/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.	H	
10/701,883	MUHANNA ET AL.	
Examiner	Art Unit	
Christopher D. Prone	3738	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 19 April 2007.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-4, 6-13, 15, 16, 18, 20-23, 25-30, 41-45 and 48-50 is/are pending in the application.
 - 4a) Of the above claim(s) 3, 11-13, 16, 22, 23, 25, 27-30 and 41-45 is/are withdrawn from consideration.
- 5) Claim(s) 1, 2, 4, 6-10, 15, 18, 20, 21, 26 and 48-50 is/are allowed.
- 6) Claim(s) _____ is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All
 - b) Some *
 - c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 1/29/07 11/10/04
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) Notice of Informal Patent Application
- 6) Other: _____

DETAILED ACTION

Election/Restrictions

Upon further review claims 3, 16, and 22 remain withdrawn from consideration because the grooves of the elected species are continuous as described in claim 2, which is clearly shown in figure 24, the cross-section is not rectangular also shown in figure 24, and no sheath is shown in any of figures 23-26.

However claims 15, 21, and 26, previously withdrawn from consideration as a result of a restriction requirement, are hereby rejoined.

Claim Objections

Claims 15, 21, and 26 are objected to because of the following informalities: they are dependent upon a cancelled claim. Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

Claim 48 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claim requires that a groove on top of the implant is not collinear with a groove on the bottom. This is not true about the elected species, as seen in figure 24. All grooves 160 appear to be collinear. It is unclear exactly what the applicant means by co linear.

Claim 22 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) The invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 4, 6-10, 15, 18-20, and 48-50 are rejected under 35 U.S.C. 102(b) as being anticipated by United States Patent 5,782,919 Zdeblick et al.

Zdeblick discloses a vertebral body replacement comprising a body 10, nonparallel top and bottom surfaces (shown near reference numbers 27 and 18) having window 27 and protrusions 19, two growth hole faces 22 having 4 through holes 24 and 25, continuous grooves located between the serrations 18 and 19 extending along the top and bottom surfaces having a depth that extends parallel to planar surface 12. The first growth hole face is considered planar because the examiner is only viewing the central section (22) as the surface. The second growth hole face is considered arcuate because the examiner is viewing the entire side surface as the face including the central portion and its curved edges. Zdeblick further disclose use of a second identical implant for insertion along side the first.

In regards to claim 2 the grooves on the top surface extend completely through the top surface from the first growth hole face to the second growth hole face.

In regards to claims 48-50 Zdeblick discloses a plurality of grooves that extend perpendicular to the posterior surface and are separated by openings. The first groove on the top is clearly not collinear with the last groove on the bottom. Each groove also comprises two serrations forming its upper boundaries.

Response to Arguments

Applicant's arguments with respect to all claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher D. Prone whose telephone number is (571) 272-6085. The examiner can normally be reached on Monday Through Fri 8:30 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on (571) 272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Christopher D Prone
Examiner
Art Unit 3738

CDP


CORRINE McDERMOTT
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700